



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to reduce FoodShare benefits (FS), a hearing was held on September 15, 2015, by telephone. A hearing set for August 18, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined petitioner's FS amount.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner formerly received \$183 per month in FS. Effective May 1, 2015, his FS were reduced to \$50 monthly following the implementation of a new law concerning the budgeting of utility expenses for FS purposes. Petitioner appealed, and the reduction was upheld in fair hearing decision no. FOO [REDACTED] dated June 12, 2015.

- [REDACTED]
3. Petitioner received two months of continued benefits at the higher FS level when he appealed the reduction. Following the fair hearing decision the agency established a \$226 overpayment to recover the excess continued benefits, claim no. [REDACTED].
 4. Effective August 1, 2015, the monthly FS amount increased to \$55 because petitioner's rent increased. FS were reduced by \$10 to recover the overpayment, meaning that petitioner received \$45.
 5. Petitioner is diabetic and requires a special diet.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

In the FS calculation petitioner did not receive an excess medical expense deduction. Petitioner sent a number of months' worth of prescription co-pay reports, but they do not average out to \$35 per month. The two most recent reports petitioner sent for April and May, 2015 were both less than \$10 for the month.

Petitioner's primary appeal issue is that he has a special diet, and he sent medical verification. However, the issue was dealt with in the prior decision. The FS program does make an allowance for special diets. By federal law at 7 C.F.R. §273.9(d)(3), special diets cannot be factored into the FS allotment. The Division of Hearings and Appeals does not have authority to contradict the federal FS rules, and thus I cannot order petitioner's FS to be increased because of his dietary requirements.

Although petitioner did not specifically object to the \$10 reduction to recover the overpayment, I note that FS rules provide that if a person receives continued benefits pending a hearing, and the agency decision is upheld, the agency must recover as an overpayment the amount of extra benefits issued due to the order to continue benefits pending the appeal. See 7 C.F.R. §273.15(k)(1).

CONCLUSIONS OF LAW

The agency has correctly determined petitioner's current FS allotment to be \$45 (\$55 allotment minus \$10 overpayment recoupment); the agency cannot increase FS due to dietary requirements.


THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.



Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

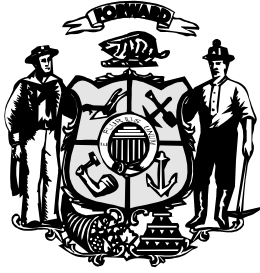
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of September, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 16, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability